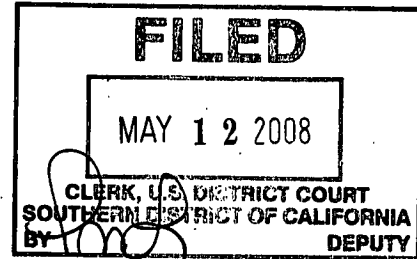


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7 Attorneys for Plaintiff  
UNITED STATES OF AMERICA



8  
9 UNITED STATES DISTRICT COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,	)	Criminal Case No. 08cr0899-BTM
	)	
12 Plaintiff,	)	<b>STIPULATION OF FACT AND JOINT</b>
	)	<b>MOTION FOR RELEASE OF</b>
13 v.	)	<b>MATERIAL WITNESS AND</b>
	)	<b><u>ORDER THEREON</u></b>
14 FRANCISCO DEL TORO, et. al,	)	
	)	
15 Defendant.	)	
	)	

16  
17 **IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES  
18 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and  
19 Rebecca S. Kanter, Assistant United States Attorney, and defendant DIONERY MEDINA-SOTO,  
20 by and through and with the advice and consent of defense counsel, Kenneth J. Troiano, Esq., that:

21 1. Defendant agrees to execute this stipulation at the next court appearance and to  
22 participate in a full and complete inquiry by the Court into whether defendant knowingly,  
23 intelligently and voluntarily entered into it. Defendant agrees further to plead guilty to count one of  
24 the superceding information charging defendant with Bringing In Aliens Without Presentation, in  
25 violation of 8 U.S.C. § 1324(a)(2)(B)(iii) and Title 18, United States Code, Section 2.

26 2. Defendant acknowledges receipt of a plea agreement in this case and agrees to  
27 provide the signed, original plea agreement to the Government.

28 3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or  
before April 25, 2008.

1           4.     The material witnesses in this case, Manuel Leyva-Romero and Felipe Barba-Garcia:  
2                 a.     Are aliens with no lawful right to enter or remain in the United States;  
3                 b.     Entered the United States illegally on or about March 3, 2008;  
4                 c.     Entered in the trunk of a vehicle driven by Defendant at the San Ysidro,  
5 California Port of Entry (POE) and were driven to Defendant's house at 21 East 2nd Street, National  
6 City, California;  
7                 d.     Were having others pay on their behalf \$3,500-\$3,600 to others to be brought  
8 into the United States illegally and/or transported illegally to their destination therein;  
9                 e.     Defendant knew or acted in reckless disregard of the fact that they were aliens  
10 with no lawful right to enter or remain in the United States; and,  
11                 f.     May be released and remanded immediately to the Department of Homeland  
12 Security for return to their country of origin.

13           5.     After the material witness is ordered released by the Court pursuant to this stipulation  
14 and joint motion, if defendant does not plead guilty to the charge set forth above, for any reason, or  
15 thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding,  
16 including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

17                 a.     The stipulated facts set forth in paragraph 4 above shall be admitted as  
18 substantive evidence;

19                 b.     The United States may elicit hearsay testimony from arresting agents  
20 regarding any statements made by the material witness provided in discovery, and such testimony  
21 shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest  
22 of an unavailable witness; and,

23                 c.     Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),  
24 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted  
25 and cross-examined the witness who made the "testimonial" hearsay statements, defendant waives  
26 the right to confront and cross-examine the material witness in this case.

27           6.     By signing this stipulation and joint motion, defendant certifies that defendant has

1 read it. Defendant certifies further that defendant has discussed the terms of this stipulation and joint  
2 motion with defense counsel and fully understands its meaning and effect.

3 Based on the foregoing, the parties jointly move the stipulation into evidence and for the  
4 immediate release and remand of the above-named material witness to the Department of Homeland  
5 Security for return to their country of origin.

6 It is STIPULATED AND AGREED this date.

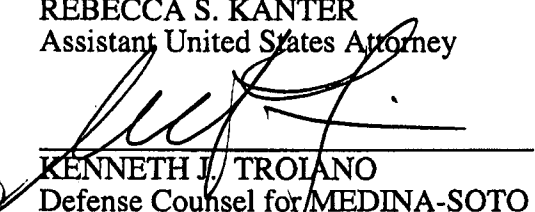
7 Respectfully submitted,

8 KAREN P. HEWITT  
United States Attorney

9  
10 Dated: 5/1/08

  
11 REBECCA S. KANTER  
Assistant United States Attorney

12 Dated: 4-22-08

  
13 KENNETH J. TROIANO  
Defense Counsel for MEDINA-SOTO

14  
15 Dated: 4-22-08

DIONERY MEDINA SOTO  
16 DIONERY MEDINA-SOTO  
Defendant

**ORDER**

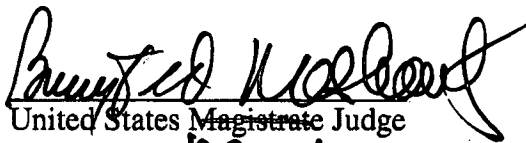
Upon joint application and motion of the parties, and for good cause shown,

**THE STIPULATION** is admitted into evidence, and,

**IT IS ORDERED** that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to their country of origin.

**SO ORDERED.**

Dated: 5-12-08

  
United States Magistrate Judge  
District